

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 97-161
Table of Allotments,)	RM-9111
FM Broadcast Stations.)	
(Susquehanna, Pennsylvania and Walton,)	
New York))	

NOTICE OF PROPOSED RULE MAKING

Adopted: July 16, 1997;

Released: July 25, 1997

Comment Date: September 15, 1997

Reply Comment Date: September 30, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by KG Broadcasting, Inc. ("petitioner"), proposing the substitution of Channel 223B1 for Channel 223A at Susquehanna, Pennsylvania, and the modification of Station WKGB-FM's license accordingly. To accommodate the upgrade, petitioner also proposes the substitution of Channel 248A for Channel 221A at Walton, New York, and the modification of Station WDLA-FM's license accordingly. Petitioner states its intention to apply for the channel, if allotted.¹

2. We believe the proposal warrants consideration since the proposed substitution of Channel 223B1 for Channel 223A at Susquehanna, Pennsylvania, would enable Station WKGB-FM to expand its service area. An engineering analysis has determined that Channel 223B1 can be allotted to Susquehanna in compliance with the Commission's minimum distance separation

¹Although the petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3911, 3919 n.41 (1990). The petitioner is requested to rectify this omission in its comments.

requirements with a site restriction of 5.9 kilometers (3.7 miles) east to accommodate petitioner's requested site.² Additionally, Channel 248A can be allotted to Walton in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) southeast to avoid a short-spacing to the licensed site of Station WYXL(FM), Channel 247B, Ithaca, New York.³ As requested, we will propose to modify Station WKGB-FM's license to specify operation on Channel 223B1 at Susquehanna, Pennsylvania, and Station WDLA-FM's license to specify operation on Channel 248A at Walton, New York. Since Susquehanna and Walton are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

3. We are not issuing an Order to Show Cause since petitioner advises that Delaware Valley Broadcasting Corporation, licensee of Station WDLA-FM, has consented to the proposed frequency change to Channel 248A and will file comments in support of the proposal at the appropriate time. However, whenever an existing licensee or permittee is ordered to change frequency to accommodate a new channel allotment, Commission policy requires the benefitting party to reimburse the affected station for costs incurred. See Circleville, Ohio, 8 FCC 2d 159 (1967). Accordingly, petitioner states its willingness to reimburse Delaware County Broadcasting Corporation for costs incurred in changing to Channel 248A at Walton, New York.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Susquehanna, Pennsylvania	223A	223B1
Walton, New York	221A	248A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

²The coordinates for Channel 223B1 at Susquehanna are North Latitude 41-56-05 and West Longitude 75-32-00.

³The coordinates for Channel 248A at Walton are North Latitude 42-08-10 and West Longitude 75-04-48.

6. Interested parties may file comments on or before September 15, 1997, and reply comments on or before September 30, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Benjamin J. Smith, President
KG Broadcasting, Inc.
776 Conklin Road
Binghamton, New York 13903
(Petitioner)

7. IT IS ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Notice of Proposed Rule Making to the licensee of Station WDLA-FM, as follows:

Delaware County Broadcasting Corporation
P.O. Box 58
Walton, New York 13856

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.